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BOOK REVIEWS.

A TREATISE ON THE LAW OF SALE OF PERSONAL PROPERTY.
By JUDAH PHILIP BENJAMIN. Fifth Edition, by WALTER
CHARLES ALAN KER, M. A., and ARTHUR REGINALD BUT-
TERWORTH. London: Sweet & Maxwell, Ltd.; Boston;
Boston Book Co. 1906. Pp. clv, 1160.

The fourth edition of Mr. Benjamin's treatise on the Law of Sales appeared in 1888. Since that time the English Sale of Goods Act has been passed (1893), and in addition the decisions in reference to this branch of law, rapidly accumulating in our commercial communities, have extended the subject matter to such a degree as to render desirable a new edition of this important work. Mr. Benjamin himself brought out the first and second editions, but the third appeared under

the editorship of Mr. A. B. Pearson-Gee and Mr. H. F. Boyd, as did also the fourth. These gentlemen in both editions preserved intact the original text, though adding to it largely.

The present editors have taken a more liberal view of their duty, and, we believe, both with good reason and good result. True it is that Benjamin on Sales has acquired a recognition entitling it to a high place among legal treatises. The extent to which it has influenced and guided the codification of this branch of the law in the Act of Parliament referred to, is in itself evidence of its merit. But codification frequently gives rise to unexpected difficulties, and exhibits a use of language imperfectly recognizing the technical meaning which has slowly crystallized therein.

Instances of this kind have occurred in this very act, and consequently have made necessary special treatment of the statutory provisions based in certain measure on a conception of such provisions as origin of the principles involved. Furthermore it is well known that Mr. Benjamin produced his work within a comparatively short time, and though it has always been recognized as exhibiting in remarkable degree a profound grasp of fundamental principles and an enlightening discussion of comparative law upon its subject matter, on the other hand there is no doubt that it fails in some measure in accuracy of detail and in full appreciation of the real significance of certain decisions.

These reasons fully justify the complete revision which has been made of this work by the present editors. They have, however, with modest care distinguished at all points the results of their own labors. To these they have devoted a considerable part of the last five years.

The principal changes made in the present edition occur in the chapter on Resale in Book V., in regard to the treatment of the subject of "Mistake," and in respect to conditions and warranties. Important additions have been made in the chapters on the "Thing Sold" and on "Failure of Consideration," and chapters have been added on the meaning of the phrase, "Not enforceable by Action," on the Incidence of the Risk and on Misrepresentation.

With Mr. Benjamin's conclusions upon the subject of the unpaid seller's right of resale the editors found themselves unable to agree, and have stated fully their position in reference thereto, and the grounds and authorities upon which it is based. At the same time they have reprinted the original text with authorities cited by Mr. Benjamin. The subject of Mistake which in former additions had been dealt with partly under the head of the Formation of the Contract, and partly under the head of its Avoidance, is now treated entire

in the chapter on Mutual Assent, a change which will, we believe, commend itself very generally.

But the revision of the text in regard to conditions and warranties is deserving of special praise. The treatment of this inherently difficult subject by Mr. Benjamin, while evidencing the excellence apparent in all his work, nevertheless is open to criticism, especially in relation to sale by sample. In view of this fact the Fourth Book which relates to conditions and warranties has been entirely rearranged, and a new chapter written on warranties implied by law. The treatment accorded this difficult subject is one of the features of this new edition of such value that even if it stood by itself it would entitle the book to careful attention.

The subject matter follows in general the Sale of Goods Act of 1893, but since this Act was in many important respects modelled after the treatment of the subject as contained in Mr. Benjamin's work, rearrangement of the chapters has not thereby been modified to any noteworthy extent, however much the text has been altered or expanded. We accordingly find in this volume a commentary on this important legislative enactment which combines both the profound ability of Mr. Benjamin and the scholarly critical power of his present editors. It is to be expected that this volume will give a new impetus to the general adoption of the Sale of Goods Act in the various States of this country, and that consequently the labors of the American Bar Association toward uniformity of law in matters of general commercial concern will in this field receive substantial aid from the publication of this new edition of an already accepted work.

To this effect the increased number of American cases cited by the present editors will contribute. Mr. Benjamin confined his citations to decisions of courts of this country almost exclusively to those of the Supreme Court of the United States and of the Court of Appeals of the State of New York, but the purpose professed in the present edition is to obtain authority on points not as yet decided in England or useful illustrations of principles discussed, and the field of citation has accordingly been widened, though as a rule reference has been limited to the Federal Courts and to those of New York, Massachusetts, and Pennsylvania and in a lesser degree to those of Maine and New Hampshire. In consequence of this fact the book gains a new significance on this side of the Atlantic.

In concluding, we cannot refrain from saying that we regard the present edition of Mr. Benjamin's book one of the most admirable revisions of standard law works recently appearing.

H. W. B.

ACT OF STATE IN ENGLISH LAW. By W. HARRISON MOORE.

Dean of the Faculty of Law in the University of Melbourne.
New York: E. P. Dutton and Co. 1906. Pp. xi, 178.

This book is an interesting monograph upon a peculiar portion of the law which has hitherto been explored only in occasional opinions of learned jurists. When one first opens the book one wonders just what is meant by the title. A little study reveals the fact that by "act of State" is indicated anything done by reason of necessity on the part of the executive department of the government and which from its very nature is not cognizable by the judicial department of the State.

Mr. Moore traces in an interesting way the history of the Executive power in respect to acts of State. He shows how from the time of Queen Elizabeth and especially under the Stuarts there was a constant struggle to extend the Royal prerogative, and one line along which such extension was sought was this very power of the King to do extra legal acts on the ground that public safety required them.

It is quite true that this power of the Executive Department has been much restrained in modern times and now exists within well defined limits. Still there are a number of acts which, when committed by the Executive departments of both Great Britain and the United States, are not subject to judicial review. Among them are acts done under martial law and acts relating to newly acquired territory. In relation to the subject of Martial Law Mr. Moore supplies a very satisfactory explanation as follows:

"The civil society is not dissolved even temporarily, but a military organization is imposed upon it. The ordinary law between subject and subject remains unaffected whatever difficulties may attend its administration. But so far as the authority of the military government is concerned, its acts are under a new régime, which has superseded the customary relations of the executive and the citizen; and whatever is done bona fide as an act of military authority is lawful and cannot be questioned in civil courts. There is no question here of the justification of the particular act complained of by necessity; the enquiry as to necessity, if it be made at all, goes further back or forward—viz: was the assumption of military authority and the supercession of ordinary rule by the establishment of martial law necessary; or had the necessity for such assumption and supercession ceased? Neither is there any question of the liability after the war for acts done during the war; it was not merely the jurisdiction but the law which was in abeyance."

This is a singularly clear statement of one of the most complicated legal situations which can arise namely the supercession of the civil government by the military power, and it goes farther than most attempts to deal with the subject by

showing the foundation on which the military power rests. This foundation is the inherent ability of a government to take necessary steps for the safety of the governed. Such steps are properly classed as acts of state.

The United States met many questions involving acts of state shortly after the Phillipine Islands were acquired, and the reader is referred to the Insular cases which when examined from this point of view assume an even more interesting aspect than they ordinarily present. Great Britain has had similar cases dealing with the status of colonies acquired in war (See *Cook v. Sprigg*, (1899) A. C. 572.) and in this connection while treating the perplexing problem of the relation of a sovereign state to the citizens of territory so acquired Mr. Moore says:

"In the United States it has been repeatedly affirmed that the new government upon a cession succeeds merely to sovereignty; that all rights of property remain unimpaired, and that, independently of any treaty, the new subjects have the ordinary rights of subjects in property as against the government."

It has been possible in the space at hand to indicate merely in a general way a few of the most interesting features of this book, but it may be truthfully said that it will repay study. It is likely to be of practical use only to the international lawyer, but it is instructive to every reader because it helps to define a hitherto doubtful legal borderland, and furnishes an interesting historical reason for a series of actions which if viewed independently might readily seem arbitrary in the extreme.

T. J. G.

THE GOVERNMENT OF INDIA, Being a Digest of the Statute Law Relating Thereto, With Historical Introduction and Explanatory Matter. By SIR COURTENAY ILBERT, K.C.S.I., Sometime Law Member of the Council of the Governor-General of India. Second Edition. Oxford: The Clarendon Press. 1907. Pp. xxxii, 408.

This is a revised edition of a book published in 1898. It deserves, in our judgment, unstinted praise. The always fascinating subject of the British power in India is treated from the point of view of the lawyer and administrator, and for conciseness and at the same time completeness of treatment the work is of signal excellence.

The first chapter sets forth a satisfactory and interesting resumé of the history of India so far as the same is necessary to a clear understanding of the general subject. To this is

prefixed a table showing important data of Indian events, side by side with the leading dates in general history. In this way a setting is furnished for the subsequent matter, at once necessary, and at the same time presented with admirable judgment as to its relation to the main purpose of the book.

In the second chapter the author considers the system of administrative law in force in India. It is impossible to indicate in this review even an outline of the development of this topic for the treatment is condensed to a degree that makes further efforts to summarize almost impossible. We cannot, however, pass without mention the discussion of the financial system (p. 133) and of the relation of the imperial authority to the "Native States." With respect to these latter the varying degree of local authority existing among them is explained, and the general control by the British Government, existing in every instance, is summarized as follows (p. 139):

"In the case of every Native State the British Government, as the paramount Power—(1) exercises exclusive control over the foreign relations of the State; (2) assumes a general, but limited, responsibility for the internal peace of the State; (3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and (4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order."

It would be interesting to follow out briefly the discussion of the treatment accorded to these different forms of supervision were this possible.

"The third chapter is a digest of the existing Parliamentary enactments relating to the government of India, with explanatory notes."

These are admirably classified, and here as elsewhere throughout the book marginal notes give great assistance to the reader. To this chapter is appended a table setting forth a comparison between the statutory enactments and the author's digest, enabling one to find immediately the page at which any Act of Parliament relating to India which has been digested, or if it has been omitted the reason therefor.

In the fourth chapter questions in connection with the application of English law to the Natives of India are discussed, and it is shown with remarkable clearness to what extent religious and local customs and ideas, negative in some cases, the advisability of the application of ordinary English rules. Particularly is this true it is said within the domain of family law, including the greater part of the law of succession and inheritance, marriage, adoption, etc., (p. 337).

In the fifth and concluding chapter the author's purpose, as defined by himself, has been

"to explain and illustrate the legal relations between the Government of British India and the Government of the Native States by comparison with the extra-territorial powers exercised by British authorities in other parts of the world, such as the countries where there is consular jurisdiction, and in particular the modern protectorates."

The subject itself discloses as well its interesting as its difficult character, but the chapter is full of suggestive thought and quite on a par in merit with the rest of this excellent book.

While a discussion of British power in India will naturally appeal most strongly to Englishmen, still to many citizens of the United States the subject possesses a singular attraction, and with the modern colonial problems of our own country a book such as this work of Sir Courtenay Ilbert's will find a ready welcome among all those who are anxious either to understand or to treat intelligently, problems arising in connection with the government of territory peopled by races differing from our own in traditions and customs.

H. W. B.

CASES ON EQUITY JURISDICTION. In two volumes with sundry notes and references. By JAMES BROWN SCOTT, Solicitor for the Department of State, Professor of International Law in the George Washington University. New York: Baker, Voorhis & Co. 1906. Pp. xiv, 781; x, 810.

"The present collection is meant to be a first book in equity. It is, therefore, an introduction and a guide, and as such deals with fundamental and underlying principles. It is believed that there is a place for such a work, and that a thorough familiarity with the essentials of the subject should precede the detailed study of the various topics of equity jurisprudence.

"For this reason the first four hundred pages of the work deal with the origin, the nature, the extent and limitations of equity, the interrelation of law and equity, and the principles and maxims controlling the administration of equity. The cases selected for this part of the work do not merely illustrate; they develop the doctrine, and it is believed that a careful study of the various cases composing this part will prepare the student to cross the threshold and examine in detail with fulness of knowledge the various phases of the subject."

These paragraphs, expressing the professed purpose of this accomplished author, describe with great clearness the first part of this collection of cases. Following this preliminary matter the cases and authorities printed refer to Equitable Rights, being grouped under the general heads, Accident, Mistake, Fraud, Notice, Estoppel and Conversion, Reconversion and Election. Cases relating to Remedies are then taken up under the divisions, Injunctions in cases of Waste, Trespass, Nuisance and Labor Disputes, Specific Performance, and Rescission, Reformation and Cancellation of Instruments.

Excellent judgment has been shown in the selection and arrangement of the material, and while the author makes a graceful apology for the presence of numerous familiar cases, we do not feel that the book in any respect evidences a tendency to appropriate unduly the results of other collections. At the same time it includes to a marked degree the important recent decisions in relation to matters of equity jurisdiction. The notes are valuable, and while not extensive form a very important part of the work.

A third volume is promised to be devoted to the subject of Equity Pleading and in it Mr. Scott intends to include cases dealing with Interpleader, Bills to Remove Cloud on Title, Bills *Quia Timet*, Bills of Peace and Bills of Account, all of which he regards as so technical in their nature as to require familiarity with equity pleading before they can be studied to advantage.

H. W. B.

WOOD'S PRACTICE EVIDENCE. By H. G. WOOD. Second Edition, by ARTHUR W. BLAKEMORE. Albany: Banks & Company. 1906. Pp. xiv, 766.

This work on Evidence is not a thorough or even an elementary *treatise of the principles* underlying this branch of the law, nor, on the other hand is it a mere digest of cases, but it resembles the latter rather than the former. It is intended as

"a 'handy' book for reference in the multifarious questions that arise in the trial of causes as to the admissibility of certain classes of evidence,"

and in carrying out this intention, the authors have summarized the principles of a vast number of cases and collected these principles in orderly fashion. It is, therefore, a book to which a lawyer would turn for the purpose of finding a decision in point rather than for the purpose of securing an adequate discussion of a principle which might enable him to solve a new problem.

Many practitioners are no doubt familiar with the first edition of this work and with its plan and purpose. Thirteen hundred new cases have been inserted in this edition, all of which its author has personally examined, and which he says contain some intelligent discussion of the subject decided. Obviously it is the type of book in which new editions are essential and necessarily supersede former ones, finding its value in the completeness with which the decisions have been collected.

The divisions of the subject matter are the well-established ones. Recognizing the growing importance of the rules with respect to book entries as evidence, and the numerous questions arising under the doctrines of *Res Gestæ* and Judicial Notice, particular care has been taken to present a full citation of authorities upon these topics. It is unfortunate that the author has not deemed it worth while to attempt at least to develop the subjects along logical lines, rather than to content himself with an orderly presentation of the numerous holdings of decided cases grouped according to their rather superficial resemblance.

To the lawyer in search of a case like the one before him the book has a distinct value. We believe however that its value would have been greatly increased by adding in each instance a careful development of the fundamental principles which determine the directions along which the rules of evidence are growing. Without such treatment the book can, of course, prove of temporary value only.

H. W. B.